

REMARKS

The pending application is a continuation of prior application serial number 09/663,813, now abandoned. Claim 1 has been canceled, without prejudice. Therefore, claims 289-369 are pending. Applicant respectfully submits that the newly added claims are fully supported by the specification as filed, including the original claims. No new matter has been added.

Applicant notes that the Office Action issued in the prior application alleged that the then-pending claims were unpatentable under 35 U.S.C. § 103 over U.S. Patent No. 6,047,274 to Johnson (the “Johnson patent” or “Johnson”) in view of U.S. Patent No. 6,519,959 to Nierlich (the “Nierlich patent” or “Nierlich”). Applicant respectfully submits that pending claims 289-369 are neither taught nor suggested by Johnson and Nierlich, either individually or in combination.

The present application recites claims directed to systems and methods for cost effective and efficient management of electric power transactions. In particular, each of the independent claims of the present application recites a method or apparatus which assesses the effect of combinations of electric loads, whether between ESPs and customers or between ESPs, based on the efficiency of energy usage. For example, independent method claim 289 recites a method for evaluating a proposed transaction for the sale and purchase of electric power including:

determining an effect upon the energy
service provider’s efficiency in energy usage
of combining the electric loads of the
customer with the existing electric power
supply obligation of the energy service provider.

Each of the other pending independent claims recite a similar limitation, whether with regard to transactions involving ESPs and customers, multiple customers or multiple ESPs. As a result, all of the pending claims are neither taught nor suggested by Johnson and Nierlich, either individually or in combination, as these references lack any teaching regarding use of the efficiency of energy usage from combining or shifting electric loads in evaluating an electric power transaction.

The Johnson patent addresses the problem of maximizing pricing efficiency in transaction between ESPs and users, but nowhere even mentions, much less suggests, determining an efficiency of energy usage as a factor in evaluating an electric power transaction, as recited in the pending claims. Indeed, Johnson’s central purpose is to stimulate competition

between ESPs and thereby reduce energy prices. *Johnson* at Abstract: 1:41-44; 5:6-9. Quite simply, *Johnson* describes an energy auction process focused on efficiency of price, but not based on efficiency of energy usage. *Id.* at 5:67 to 6:10 (“The invention disclosed herein provides an auction service....[P]roviders supply energy (*i.e.*, electric power or natural gas) to end users (or resellers) in accordance with economic incentives (*e.g.*, lowest price).”)

The Nierlich patent purports to describe a system for real-time load control and fails to cure the deficiency of the *Johnson* patent, namely the lack of any teaching or suggestion in an electric power transaction of using efficiency of energy usage to evaluate the merit of shifting the electric load of a customer to an ESP, aggregating electric loads of multiple customers or shifting electric supply obligations between ESPs, as recited in the pending claims.

As an initial matter, Applicant notes that the real time load curtailment purportedly taught by Nierlich has nothing to do with energy efficiency. Nierlich’s load curtailment is based upon rules that do not derive from or operate upon considerations of energy efficiency, but rather is based on a network access device that follows prescribed rules to determine when load curtailment is needed. *See Nierlich* at 3:27-39; 5:31 to 6:24. Nierlich does not evaluate potential or historical electric power shifting transactions on any basis, and certainly not based upon considerations of efficiency of energy usage as recited in the pending claims, to a identify or evaluate a potential or historical electric power transaction. Moreover, the curtailment taught in Nierlich requires that the transaction already occurred, *i.e.*, Nierlich addresses curtailment in the context of completed electric power transactions (as curtailment requires that a power transaction already occurred) and thus does not teach anything about evaluating future or proposed transactions as recited in many of the pending claims.

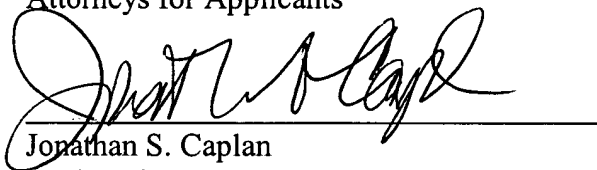
Applicant further notes that Nierlich describes that its central, if not sole, focus is upon physical energy curtailment using demand side management. *Nierlich* at Abstract; 1:19-25; 2:51-64, 51. For example, Nierlich describes using energy prices obtained from a wholesale energy exchange in connection with triggering curtailment requests or curtailment events. *Id.* at Abstract; 8:17-45; 9:24-34. Therefore, Nierlich teaches a system for achieving efficient load control by curtailment based on economic issues, but simply does not address the efficiency of energy usage from shifting electric power supply obligations between ESPs and/or customers, as recited in the pending claims.

Applicant respectfully asserts that for at least the reasons set forth above, Johnson and Nierlich, individually or in combination, fail to teach or suggest evaluating the efficiency of energy usage between an ESP and a customer, between multiple customers or between ESPs in evaluating an electric power transaction, as recited in the pending claims. Accordingly, Applicant respectfully requests entry of this Preliminary Amendment and asserts that the pending claims are in condition for allowance. Prompt allowance of claims 289-369 is respectfully requested.

Respectfully submitted,

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